

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST ENVIRONMENTAL
ADVOCATES,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Defendant.

Case No. C17-1664RSL

ORDER DENYING DEFENDANT'S
MOTION TO STAY PROCEEDINGS

This matter comes before the Court on the U.S. Environmental Protection Agency's "Motion to Stay Proceedings." Dkt. # 14. Plaintiff filed this action to force the EPA to approve or disapprove the Total Maximum Daily Loads ("TMDLs") proposed by the Washington State Department of Ecology for 73 segments of the Deschutes River Basin. The parties agree (a) that the EPA had a statutory duty to review the TMDL submission and issue its decision within 30 days of December 17, 2015, and (b) that it failed to do so. The EPA now anticipates completing its review by June 29, 2018, and asks the Court to stay this litigation until then. Plaintiff opposes the motion.

As part of its inherent power to "control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants," this Court has the power to stay litigation pending resolution of a related proceeding. Landis v. N. Am. Co., 299 U.S. 248,

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1 254 (1936). “This rule applies whether the separate proceedings are judicial, administrative, or
2 arbitral in character, and does not require that the issues in such proceedings are necessarily
3 controlling of the action before the court.” Leyva v. Certified Grocers of Calif., Ltd., 593 F.2d
4 857, 863-64 (9th Cir. 1979). A stay will not be ordered, however, unless the moving party shows
5 that it will provide some advantage in terms of efficiency or fairness. See Clinton v. Jones, 520
6 U.S. 681, 708 (1997) (“The proponent of a stay bears the burden of establishing its need.”).

7 The EPA has not made the necessary showing. Plaintiff filed this action in November
8 2017 to compel the EPA to carry out its statutory duty. Despite having had over two years to
9 complete its review and facing the looming threat of injunctive relief, the agency has still not
10 issued a decision. Instead, the EPA offers a detailed but unenforceable time line: the time frames
11 “represent EPA’s informed judgment at this time about its projected schedule,” but they are
12 “necessarily subject to some variability.” Dkt. # 14-2 at 12. The EPA has not committed to
13 providing the relief plaintiff requested by a date certain. It has not negotiated a consent decree or
14 provided any sort of enforceable assurance that it will do what it says it will do. A stay based on
15 nothing more than a statement that the EPA will try to finalize the TMDL document by the end
16 of June leaves plaintiff in no better position than when it first filed this lawsuit and, if the
17 deadline is not met, simply delays the litigation. On the other hand, the benefits the EPA hopes
18 to obtain from a stay, namely, the ability to focus on completing its review of the TMDLs
19 without the distraction of on-going litigation, is available through other mechanisms which pose
20 less risk to plaintiff’s interests. Given that the EPA has all but acknowledged that it violated the
21 Clean Water Act and needs to approve or disapprove the TMDLs in the near future, a negotiated
22 consent decree or stipulated entry of judgment would provide plaintiff some assurance of timely
23 agency action or, at the very least, an enforcement mechanism if the agency again fails to meet
24 its deadline.

1 For all of the foregoing reasons, the EPA's motion for a stay of these proceedings is
2 DENIED.

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4 Dated this 4th day of May, 2018.

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6 Robert S. Lasnik

7 United States District Judge
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